

§ 3.34

Commission notice of that determination.

(f) Except as otherwise provided in § 3.10(d), a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

(1) The Commission or the National Futures Association has instituted a proceeding to suspend or revoke such registration;

(2) The Commission or the National Futures Association imposes, or gives notice by mail which notice shall be complete upon mailing, that it intends to impose terms or conditions upon such withdrawal from registration;

(3) The Commission or the National Futures Association notifies the registrant by mail, which notice shall be complete upon mailing, or the registrant otherwise is notified that it is the subject of an investigation to determine, among other things, whether such registrant has violated, is violating, or is about to violate the Act, rules, regulations or orders adopted thereunder;

(4) The Commission or the National Futures Association requests from the registrant further information pertaining to its request for withdrawal from registration; or

(5) The Commission or National Futures Association determines that it would be contrary to the requirements of the Act, or of any rule, regulation or order thereunder, or to the public interest to permit such withdrawal from registration.

(g) Withdrawal from registration in one capacity does not constitute withdrawal from registration in any other capacity.

(h) Withdrawal from registration does not constitute a release from liability for any violation of the Act or

17 CFR Ch. I (4-1-01 Edition)

of any rule, regulation, or order thereunder.

(Approved by the Office of Management and Budget under control number 3038-0008)

[46 FR 48917, Oct. 5, 1981, as amended at 46 FR 63035, Dec. 30, 1981. Redesignated at 46 FR 48918, Oct. 5, 1981, and amended at 47 FR 27551, June 25, 1982; 47 FR 57010, Dec. 22, 1982; 48 FR 35298, Aug. 3, 1983; 49 FR 5526, Feb. 13, 1984; 49 FR 39534, Oct. 9, 1984; 53 FR 8434, Mar. 15, 1988; 54 FR 41078, Oct. 5, 1989; 57 FR 23150, June 2, 1992; 58 FR 19592, Apr. 15, 1993; 60 FR 49334, Sept. 25, 1995; 62 FR 4642, Jan. 31, 1997]

§ 3.34 Mandatory ethics training for registrants.

(a) Any individual registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person, floor broker or floor trader under the Act must attend ethics training to ensure that he understands his responsibilities to the public under the Act, including responsibilities to observe just and equitable principles of trade, rules or regulations of the Commission, rules of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation.

(b) The training required by this section must:

(1) Include a description of the requirements of the Act and rules promulgated thereunder concerning treatment of customer orders and handling of customer business;

(2) Cover the subject matter referred to in paragraph (a) of this section, as it pertains to the registration category in which the person is registered or seeking registration; and

(3) The training required by this section must be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by:

(i) A self-regulatory organization;

(ii) [Reserved]

(iii) A person included on a list maintained by a registered futures association who has presented satisfactory

evidence to the registered futures association that any individuals, on behalf of such person, who present ethics training, prepare an ethics training videotape or electronic presentation, or who supervise the foregoing, have taken and passed the proficiency testing requirements for an ethics training provider, as established by rules of a registered futures association that have been approved by the Commission, and possess a minimum of three years of relevant experience for an ethics training provider, as established by rules of a registered futures association that have been approved by the Commission, and who certifies that:

(A) Such person, any principals thereof (as defined in § 3.1(a)) and any individuals, on behalf of such person, who present ethics training or who prepare an ethics training videotape or electronic presentation are not subject to:

(1) Statutory disqualification from registration under Sections 8a(2) or (3) of the Act;

(2) A bar from service on self-regulatory organization governing boards or committees based on disciplinary histories pursuant to § 1.63 of this chapter or any self-regulatory organization rule adopted thereunder; or

(3) A pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, or 9 of the Act, or similar proceeding under Section 8a of the Act, or §§ 3.55, 3.56, or 3.60; and

(B) If the person will conduct training via videotape or electronic presentation, either exclusively or in addition to in-person training, he will maintain documentation reasonably designed to verify the attendance of registrants at such videotape or electronic presentation for the minimum time required.

(iv) The certification required by paragraph (b)(3)(iii) of this section is continuous and if circumstances change which result in the certification becoming inaccurate, the person must promptly so inform the registered futures association. Upon notice of such inaccuracy, the registered futures association shall refuse to include such person on or remove such person from the list referred to in paragraph (b)(3)(iii) of this section.

(v) The registered futures association shall develop and submit to the Commission in accordance with Section 17(j) of the Act rules to provide reasonable procedures for making determinations not to include or to remove persons from the list referred to in paragraph (b)(3)(iii) of this section. Such rules shall permit a hearing before the registered futures association with an opportunity for appeal to the Commission. Such appeal shall consist solely of consideration of the record before the registered futures association and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the decision of the registered futures association.

(4) Any person providing ethics training under this section must maintain records of the materials used in such training, and of the attendees at such training, documentation to verify completion by a registrant of training through videotape or electronic presentation and evaluations of trainers in accordance with § 1.31 of this chapter. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice and persons providing ethics training shall be subject to audit by any representative of the Commission. Records of attendees at such training shall be provided upon request to a registered futures association in such format as specified by the registered futures association.

(5) No person referred to in paragraph (b)(3) of this section may represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that such person's abilities or qualifications, the content, quality or accuracy of his training program, or the positions taken in the course of resolving any actual or hypothetical situations presenting ethical or legal issues, have in any respect been passed upon or endorsed, by the Commission, a registered futures association, or any representative thereof. Any promotional or instructional material used in connection with the training required by this section must prominently state that the Commission and any registered futures association have not reviewed or approved the specific content

of the training program and do not recommend the provider of such training: *Provided, however*, that this paragraph shall not be construed to prohibit a statement that a person is included on a list of ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.

(c) Any person providing ethics training under this section may wish to address, as appropriate, issues such as:

(1) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(2) How to establish effective supervisory systems and internal controls;

(3) Obtaining and assessing the financial situation and investment experience of customers;

(4) Disclosure of material information in dealings with customers; and

(5) Avoidance of conflicts of interest, and when they cannot be avoided, disclosure to the customer and authorization to continue handling the customer's business if permitted under the Act and Commission rules.

(d)(1) Any individual granted registration under the Act as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person or floor broker after April 26, 1993 who has not been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, must attend training referred to in this section within six months after being granted registration, and thereafter every three years.

(2) Any individual registered as a floor trader under the Act after April 26, 1993 who has not been duly registered under the Act during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, and whose name did not appear on a list submitted by a contract market to the National Futures Association in accordance with § 1.66(a) of this chapter, must

attend training within six months after being granted registration, and thereafter every three years.

(3) The training required by this section for individuals described in paragraphs (d)(1) and (d)(2) of this section must be at least four hours in duration for an individual's initial session and one hour in duration for subsequent periodic sessions. The requirement that new registrants attend ethics training within six months of being granted registration may be satisfied if such training of at least four hours in duration is taken within six months prior to the registrant having filed his application for registration.

(4) All individual registrants registered as of April 26, 1993 must attend the training referred to in this section every three years beginning April 26, 1993. If such an individual has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, the duration of his next session, which must be completed by April 26, 1996, must be at least one hour and all subsequent sessions must be at least one hour. If such an individual has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, the duration of his initial session, which must be completed by April 26, 1996, must be at least two hours and all subsequent sessions must be at least one hour.

(5) Any individual registrant granted registration under the Act after April 26, 1993 who has been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's most recent application for registration was received by the National Futures Association, must attend the training referred to in this section in accordance with the provisions of paragraph (d)(5) of this section. If such an individual has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section within the two years preceding filing of his most recent registration application with the National Futures Association, the duration of his next session, which must be completed by three years from the date of the previous session or

within six months from the date registration is granted, whichever comes later, must be at least one hour and all subsequent sessions must be at least one hour. If such an individual has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since the date two years prior to the date his most recent registration application was received by the National Futures Association, the duration of his initial session, which must be completed six months from the date registration is granted, must be at least four hours and all subsequent sessions must be at least one hour.

(6) Any individual whose name appears on a list submitted by a contract market to the National Futures Association in accordance with §1.66(a) of this chapter must:

(i) If he has received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, attend his next training session by April 26, 1996, and attend subsequent training sessions every three years, all of which sessions must be at least one hour; and

(ii) If he has not received the training referred to in this section from a provider set forth in paragraph (b)(3) of this section since April 26, 1991, attend the training referred to in this section by April 26, 1994, which must be at least four hours, and thereafter attend training every three years for sessions of at least one hour.

(e) Evidence of attendance at ethics training, including evidence of completion of videotape or electronic training, must be maintained in accordance with §1.31 of this chapter by:

(1) An individual registered as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, or leverage transaction merchant;

(2) In the case of an associated person, by each sponsor of the associated person; and

(3) In the case of a floor broker or floor trader, by each contract market that has granted trading privileges to the floor broker or floor trader.

[58 FR 19593, Apr. 15, 1993; 58 FR 21776, Apr. 23, 1993, as amended at 60 FR 63912, Dec. 13, 1995; 61 FR 20131, May 6, 1996]

Subpart B—Temporary Licenses

§3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an associated person, floor broker (which, if the applicant has not been registered as a floor broker within the preceding sixty days shall permit such applicant to act in the capacity of a floor trader only) or floor trader upon the contemporaneous filing with the National Futures Association of:

(a) A Form 8-R, properly completed in accordance with the instructions thereto;

(b) The fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose; and

(c) If the applicant is applying for registration as an associated person, the sponsor's certification required by §3.12(c) of this part, and if the applicant is applying for registration as a floor broker or floor trader, evidence that the applicant has been granted trading privileges by a contract market that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

(d) The failure of an applicant or the applicant's sponsor to respond to a written request by the Commission or the National Futures Association for clarification of any information set forth in the application of the applicant or for the resubmission of fingerprints in accordance with such request will be deemed to constitute a withdrawal of the applicant's registration application and shall result in the immediate termination of the applicant's temporary license.

[49 FR 8219, Mar. 5, 1984, as amended at 49 FR 39534, Oct. 9, 1984; 53 FR 8435, Mar. 15, 1988; 54 FR 19559, May 8, 1989; 57 FR 23151, June 2, 1992; 58 FR 19594, Apr. 15, 1993; 64 FR 1728, Jan. 12, 1999]